IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1982

No. 82-1914

EVELYN FALKOWSKI,
Petitioner

v.

BERTRAM N. PERRY,
Respondent

and

LOWELL W. PERRY, etc. *et al.*,
(Equal Employment Opportunity Commission),
Respondent

SUPPLEMENT TO REPLY -NO. 82-1914
REQUEST TO REOPEN -NO. 79-1244

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Southfield, Mich. 48075

Edward Owen Falkowski, Esq.
P.O. Box 18
Fayetteville, Tenn. 37334

SUPPLEMENT TO ANSWER IN NO. 82-1944
AND MOTION TO RE-OPEN NO. 79-1244

A part of Freedom of Information Act Request Answer received by Petitioner on September 19, 1983 (Exhibit A) indicates that a 1978 district court decision in Perry v. Golub and Falkowski v. Lowell Perry (vacated in 1979 as beyond the Court's jurisdiction), harmed the reputation of EEOC, including Petitioner, in a "Whitehouse News release," and with the then Attorney General of the United States.

Petitioner, in No. 79-1244, sought certiorari to the Fifth Circuit because of the adverse collateral consequences to her of the unfounded vacated findings. Her earlier Petition was successfully opposed by spokespersons for the government, on grounds findings were vacated to spawn no consequences. Yet Petitioner suffered numerous adverse collateral consequences after the Fifth Circuit vacated the decision by unpublished Opinion, which consequences continue.

These adverse consequences led directly to the instant appeal in No. 82-1914.

One of the consequences is that the Department of Justice blocked legal defense it usually arranges for males when sued as agency officials (Exhibit B) when her immediate subordinate sued her as an agency official for recording their conversation. This has cost her thousands of dollars and thousands of hours, stopped the progress of her career, and lessened her authority and effectiveness in her chosen work.

But for now vacated decisions, the Justice Department, according to evidence (Exhibit C) of its own policies, would not have blocked government legal defense to Petitioner for lawfully recording a conversation to prove gross insubordination in self-defense when EEOC, in violation of its grievance rules, failed to process her grievances.

Due process is being denied based on findings not based on a trial and later vacated as beyond a district court's jurisdiction. Such findings represent a pattern by that Court. (See Reply and A Bonding Co. v. Sunnuck, CA-5, 629 F. 2d 1127 (1980) at 1134).

Even after findings in this case were vacated the district Court renewed them in fee awards.

Federal Courts and Federal Agencies have not corrected harm caused by vacated district court decisions. Petitioner asks this Court's review of violations of the integrity of the judicial process in Nos. 79-1244 and 82-1914 in the light of uncontested evidence she submits and in accordance with the final clause of its Rule 17.1(a) (1980).

Respectfully submitted,

Evelyn Falkowski

Evelyn Falkowski
Pro Se

DATE: November 28, 1978

memorandum

REPLY TO ATTN OF: Frank M. Salter

XXXXXX SUBJECT:

TO: Mel Alexander

At 1:00 p.m. November 28, 1978, I received a call from the Office of the Attorney General.

Phil Jordan, Special Assistant to the Attorney General told me that he had seen a small Whitehouse news release citing an article in the Birmingham Newspaper whereby Judge Guin criticized various aspects of the EEOC. He said that Judge Bell was interested in seeing copies of the article and the judge's opinion, in that the news release was only three sentences in length.

Jordan at first wanted these items wired to him, but later stated that two copies of each document, the article and the opinion should be mailed to his office address and to his residence.

Office address: ~~Attorney General~~
Rm. 5119
Main Justice Building
10th and Constitution Avenue
Washington, D.C.

633-3971

Residence: [redacted] (b)(6)

EXHIBIT A

EXHIBIT B

[COMMITTEE PRINT]

95TH CONGRESS
2d Session
SENATE

JUSTICE DEPARTMENT RETENTION OF PRIVATE LEGAL COUNSEL TO REPRESENT FEDERAL EMPLOYEES IN CIVIL LAWSUITS

STAFF REPORT

TO THE

SUBCOMMITTEE ON ADMINISTRATIVE PRACTICE AND PROCEDURE

OF THE

COMMITTEE ON THE JUDICIARY

OF THE

UNITED STATES SENATE

MAY 1978

Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE
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This is a class action filed by the American Civil Liberties Union on behalf of 17 individual and organizational plaintiffs purporting to represent all U.S. citizens affected by intelligence collection activities of six Federal intelligence agencies including CIA and NSA. Among the allegations made are those concerning mail opening by CIA and electronic communications interceptions by NSA, two areas of conduct under investigation at the start of FY 1977 by the Criminal Division for possible violation of Federal laws. Numerous past and present employees of the six intelligence agencies are sued individually and in their official capacities, and many have requested Departmental representation.

No decision has yet been made on whether private counsel should be retained for the individual defendants. However, it is believed likely that several private attorneys, perhaps in the neighborhood of six, will be needed by early spring of 1977.

(7) Jack Anderson v. Richard Nixon, et al., Civil Action No. 76-1794 (D. D.C.)

Defendants For Whom Private Representation Has Been Provided By Justice Department:

John Mitchell

Other Named Defendants:

Attorney General
Commissioner of Internal Revenue Service
Director, Federal Bureau of Investigation
Director of Central Intelligence Agency

Secretary of State
Henry A. Kissinger
Richard G. Kleindienst
Richard Helms
Charles N. Colson
~~John W. Dean, III~~
L. Patrick Gray, III
Egil Krogh, Jr.
Robert C. Mardian
Richard M. Nixon
H.R. Haldeman
John D. Ehrlichman
Jeb Stuart Magruder
Herbert W. Kalmbach
David R. Young
John J. Caulfield
Anthony T. Vlasewicz
E. Howard Hunt
G. Gordon Liddy
James W. McCord, Jr.

This is an action filed in September 1976 by columnist Jack Anderson against the heads of four Federal agencies and the FBI, as well as twenty individual defendants associated with the Nixon Administration for alleged deprivation of the plaintiff's constitutional rights to freedom of the press, privacy, and freedom from warrantless searches and seizures. A variety of improper conduct is alleged, including harassment and unlawful physical and electronic surveillance.

Five defendants are sued in their official capacities, and the Department will, of course, represent them directly. The remaining defendants are sued individually. It is too early to predict with any certainty how many private counsel will be needed. To date, one attorney has been retained to represent fromer Attorney General Mitchell, and the Department has offered to retain another attorney to represent former President Nixon, Mr. Haldeman and Mr. Ehrlichman. The face of the complaint suggests that inter-defendant conflicts may arise in the course of the litigations. If the individual defendants should request our representation, and if they should be in conflict regarding the plaintiff's allegations, then, based upon current Department policy, consideration would be given to retaining private counsel.

no jurisdiction, presumably every action taken by the district judge is a legal nullity. But even if the acts of Judge Guin were a legal nullity, they inflicted affirmative irreparable harm upon Ms. Falkowski by the very fact of publication -- not only in the official reports, where they became a part of legal history, but on the front page of the Birmingham News. And it should be noted that the reference to Ms. Falkowski as a "raving maniac" and a "wild screaming woman" were not made in a spontaneous outburst from the bench; they are contained in a written opinion -- filed some time after the proceedings in Judge Guin's court. They were not only gratuitous, they were apparently calculated to inflict maximum harm upon Ms. Falkowski. The mere declaration by this court in a summary, unpublished opinion that the decisions are vacated does not even approach restoration of the status quo ante.

The 1975 and 1978 proceedings before Judge Guin were not initiated by Ms. Falkowski. She was an involuntary participant in both proceedings. It would be a travesty if the doctrine of judicial immunity were to be implicity extended in this case so far as to even preclude an appellate court from taking any affirmative steps to mitigate the damage inflicted upon Ms. Falkowski by Judge Guin. And it would be particularly anomalous if the impotence of the appellate court was based on the fact that the district court did not have jurisdiction to conduct the proceedings out of which the damage was inflicted.

Ms. Falkowski was a surprise defendant in the 1975 proceedings before Judge Guin in Perry v. Golub. Those proceedings resulted in a published decision impugning her; the court found that there was likelihood of success of establishing that Ms. Falkowski was engaged in illegal activity -- that she had purposely failed conciliation of cases in order to direct legal business to attorneys friendly to her. The publication of those findings has harmed her even though those facts were not and could not be established. This was a case where the preliminary injunction did not merely "preserve the relative positions of the parties until a trial on the merits can be held," University of Texas v. Camenisch, 101 S.Ct. 1830, 1833 (1981), because the publication of the 1975 and subsequent decisions has destroyed her good name and reputation. Her position has been worsened by every published decision of Judge Guin, and she has never been afforded a trial on the merits. And the EEOC won't even publish the fact that the charges against her could not be sustained because to do so would conflict with the "personality conflict" theory conjured up by Messrs. Golub and Hollowell to resolve the dispute between them. The EEOC publicly repudiated Judge Guin's 1978 decision

because it impugned Mr. Golub. It will not do so for Ms. Falkowski because she is not a part of the inner circle at EEOC headquarters. She has no one left but this court.

Respectfully submitted,

REISING, ETHINGTON, BARNARD,
PERRY & BROOKS

Owen E. Perry

OEP/dw

cc: Vella Fink, Esq.
William F. Gardner, Esq.
Mr. Bertram N. Perry
Mrs. Evelyn Falkowski

Excerpt: Transcript of Recording of Conversation between
Petitioner and her immediate subordinate (Record, 464 FS 1016)

BERTRAM PERRY:

Now you had time to engage in this shit all day. You ugly white bitch, I ought to kick your ass. You write that down while you're at it. It's a damn shame that you would give something like this. You talk about somebody's subordinate. You talk about Ed Russell. I didn't do anything to Ed Russell. Didn't even talk to him. You're just too damn silly to even realize what's going on. But that's all right. You think you're going to provoke me. Did you get the key to that cabinet out there, or did you loose that too. You stupid heiffer. Well, you write another warning. This will be in your damn ass beforeits over. This will be in your ass before its over, youUgly bitch...

RUSTLING SOUND: (James Nicholson passed by or came to door)

BERTRAM PERRY:

Get away from here. Get away from that door. See, I ought to bring my little boy up here and get baby sitting service for him every day. I see that every day. And I've reported it to you at least five or six times and you haven't done a thing about it, because they're white. And you love Ed Russell simply because he's a Tom. You know

(continued)

what he is, and you know he caters to something like you. That just wipes him out as far as I'm concerned. If anybody, any Black person is that stupid, to try to deal with you that way, well you know. You said I spoke to him harshly. I told him to go back to his chain of command, and I told him...Just like you to say he came up here on a grievance. The man said he didn't come up here on no grievance. He said it just as clear as a crystal. You think you slick, but that's alright, that's alright. You'll get yours. You'll get yours. You ain't fit for me to try to deal with. You think as little sense as everybody has, you want all your people to sit down and testify for you. Well, it won't work Falkowski because you are basically wrong. You can't do anything straight. I'm telling you that and I won't have no problem. Everything you do has got some mess involved in it.

You've got to save that mess till 4:30. You know, you can do that all you want to, but Ms. Falkowski, it doesn't disturb me in the least because I know from whence it comes and I know what's really involved and I know what you doing. You can get Nicholson or anybody else to witness or anything, but you see one thing that we know that we've got. Read Perry v. Golub. Read that.

EXHIBIT C

Judge Dismisses Suit Against American Air

By Michael Isikoff
Washington Post Staff Writer

A federal judge yesterday dismissed a Justice Department antitrust suit against American Airlines that was based on a secret tape recording in which the airline's president, Robert L. Crandall, urged the chairman of Braniff International Airlines to "raise your . . . fares 20 percent."

The decision was a blow to Assistant Attorney General for antitrust William Baxter, who had shown a keen interest in the much-publicized case and had personally supervised its handling. The case relied exclusively on the taped conversation in which Crandall, using unusually blunt and salty language, told then-Braniff chairman Howard Putnam that if he did raise his fares, "I'll raise mine the next morning."

"Although Crandall's conduct was at best unprofessional and his choice of words distasteful, the remedy does not lie in the antitrust laws," U.S. District Judge Robert Hill of Dallas ruled in dismissing the case.

The Justice Department has not yet decided whether to appeal.

In a 19-page decision, Hill said the government's case was filled with "aerodynamic deficiencies" and saddled by "too little horsepower," essentially because Putnam immediately rejected Crandall's offer and thus no price-fixing or agreement to fix prices ever took place. "The complaint alleges nothing more than a rebuked solicitation . . . ," Hill said. "Without an agreement or conspiracy the government's case must fail."

A spokesman for American Airtion, said division lawyers had not yet had time to review Hill's decision so any consideration of an appeal would be "premature."

A spokeswoman for Braniff, which is in reorganization after filing for bankruptcy protection last year, declined to comment on the judge's decision.

The case had attracted widespread attention when it was filed in February, mainly because of the tape, which provided a rare glimpse of the private conversation of business executives. The conversation was recorded by Putnam without Crandall's knowledge and later was supplied to the Justice Department by Braniff lawyers.

In the transcript of the recording, which was included as part of the Justice Department's lawsuit, Putnam complains about American's actions in matching Braniff routes out of Dallas and says, "I can't just sit here and allow you to bury us without giving our best effort."

Putnam continues: "Do you have a suggestion for me?"

Crandall: "Yes. I have a suggestion for you. Raise your goddamn fares 20 percent. I'll raise mine the next morning.

Putnam: "Robert, we . . . "

Crandall: "You'll make more money and I will too."

Putnam: "We can't talk about pricing."

Crandall: "Oh bull----, Howard. We can talk about any goddamn thing we want to talk about."

The problem for the government in bringing the lawsuit was that Putnam's explicit refusal of Crandall's